

**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, ex rel. W.A. DREW  
EDMONDSON, in his capacity as ATTORNEY  
GENERAL OF THE STATE OF OKLAHOMA  
and OKLAHOMA SECRETARY OF THE  
ENVIRONMENT C. MILES TOLBERT, in his  
capacity as the TRUSTEE FOR NATURAL  
RESOURCES FOR THE STATE OF  
OKLAHOMA,

Plaintiff,

vs.

TYSON FOODS, INC., INC., TYSON  
POULTRY, INC., TYSON CHICKEN, INC.,  
COBB- VANTRESS, INC., AVIAGEN, INC.,  
CAL-MAINE FOODS, INC., CAL-MAINE  
FARMS, INC., CARGILL, INC., CARGILL  
TURKEY PRODUCTION, LLC, GEORGE'S,  
INC., GEORGE'S FARMS, INC., PETERSON  
FARMS, INC., SIMMONS FOODS, INC., and  
WILLOW BROOK FOODS, INC.,

Defendants.

Case No. 05-CV-329-GKF-SAJ

**ORDER**

Comes on for hearing State of Oklahoma's Motion to Compel Cargill, Inc. and Cargill Turkey Production to Respond to Its July 10, 2006 Set of Requests for Production [Dkt #1120], Motion for Reconsideration of Order Compelling Discovery at Docket No. 1150 [Dkt. # 1153], State of Oklahoma's Motion to Compel the Cargill Defendants to Make a Knowledgeable 30(b)(6) Designee Available for Deposition [Dkt. # 1155], Advice to Court [Dkt. #1178], and Motion for Expedited Hearing on ESI Production [Dkt. # 1197] filed after

hours the day prior to the hearing. The Court, having fully considered the arguments and submissions of counsel, the Court enters the following Order.

**State of Oklahoma's Motion to Compel Cargill, Inc. [Dkt. # 1120]:**

State of Oklahoma's Motion to Compel Cargill, Inc. and Cargill Turkey Production to Respond to its July 10, 2006 Set of Requests for Production [Dkt #1120] is granted in part as hereinafter set forth. Cargill says that it should not have to produce any documents prior to 2002, arguing that the five year statute of limitations renders any documents prior to 2002 irrelevant. Plaintiff argues that Cargill should be required to produce documents from the beginning of their operations as a poultry grower in Oklahoma in the 1960's. Plaintiff supports its position by arguing:

(1) That the statute of limitations does not run against the state.

(2) That the state may recover for damage committed at any time since Cargill began operations regardless of whether or not such damage is connected to current damage.

(3) That the operations of Cargill in applying chicken waste to the IRW watershed since the beginning have contributed to current damage to the watershed.

The court is not able to determine the validity of Plaintiff's position without extensive briefing on the legal issues presented and expert testimony on the impact of chicken waste application in the distant past upon the current condition of the watershed. Even if the court should determine that such evidence is relevant, additional testimony would be needed to determine whether the costs of producing such documents outweighs their probative value.

In the interest of avoiding such additional briefing and testimony the parties, including all defendants, are to meet and confer on or before July 20, 2007 to resolve all remaining issues presented by the Motion to Compel. The Cargill Defendants are to be prepared to discuss what records they have of such past operations and the cost of producing such information. Should issues remain following the meet and confer the parties shall notify the court of such unresolved issues which the court may set down for briefing or testimony.

The Court requires Defendants to produce documents relevant to the corporate knowledge of the Cargill Defendants of detriment to the environment from the application of poultry waste to the ground without any limit as to the date of the documents or the geographical location to which they relate. The court will not require the Cargill Defendants to produce data from anywhere other than within the IRW at this time.

The Court notes that resolution of this motion is limited to the issues raised as to these defendants and this motion and is not to be construed as dispositive of the statute of limitations and/or estoppel arguments asserted.

**Knowledgeable 30(b)(6) Designee Available for Deposition [Dkt. # 1155] :**

State of Oklahoma's Motion to Compel the Cargill Defendants to Make a Knowledgeable 30(b)(6) Designee Available for Deposition [Dkt. # 1155] is granted. Plaintiff is to issue a new 30(b)(6) notice describing in detail the subjects about which they wish to inquire. The state is entitled to depose a Cargill representative who can give

complete and knowledgeable answers regarding the scope and completeness of the search for Cargill's document production. See *Wells v Xpedx*, 2007 WL 1200955, (M.D. Fla. April 23 2007). Whether or not such designee is an attorney, such inquiry can be completed without compromising privilege or work product concerns. Questions concerning the specifics and adequacy of the search do not implicate such concerns.

**Motion for Reconsideration of Order Compelling Discovery at Docket No. 1150 [Dkt. # 1153]:**

Motion for Reconsideration of Order Compelling Discovery at Docket No. 1150 [Dkt. # 1153], is denied. The Court clarifies its Order insofar as Plaintiff's obligation to supplement. The intent of the Order is not to require document production to be repeated but to require an updated, accurate index to be provided from which the Cargill Defendants may work. The revised index is to be provided on or before July 16, 2007.

The Plaintiffs are not required to remove any extraneous or unresponsive documents from production already made. If Defendants are unable to locate the responsive documents as stated on the revised index, Plaintiffs shall be available to direct the Defendants to the responsive documents within the box.

**Motion for Expedited Hearing on ESI Production [Dkt. # 1197] :**

Motion for Expedited Hearing on ESI Production [Dkt. # 1197] is granted in part and denied in part. The Court briefly heard the statements of counsel as to the unresolved issues concerning ESI production. Many of these issues should be resolved through meet

and confer conferences. Should the parties be unsuccessful in resolving the issues, they are to file motions as to the remaining unresolved issues so that a hearing can be scheduled as soon as possible.

Tyson announced it did not need the Plaintiff's ESI responses to identify the number of the request for documents to which the response is being produced, but did want interrogatories identified if ESI is being produced in response to interrogatories.

ESI is to be produced as originally scheduled on July 2, 2007. Plaintiff announced it has assigned additional counsel to expedite production of e-mails but will not have the production completed on July 2, 2007. Plaintiff represented it would produce the e-mails it has been able to compile to date on July 2, 2007, and the Court orders any of Plaintiff's remaining e-mails to be produced on or before August 1, 2007.

Advice to Court [Dkt. #1178] has been resolved by the parties and is denied as moot.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the State of Oklahoma's Motion to Compel Cargill, Inc. and Cargill Turkey Production to Respond to Its July 10, 2006 Set of Requests for Production [Dkt #1120] is granted in part as set forth; Motion for Reconsideration of Order Compelling Discovery at Docket No. 1150 [Dkt. # 1153] is denied, subject to the clarification set forth herein; State of Oklahoma's Motion to Compel the Cargill Defendants to Make a Knowledgeable 30(b)(6) Designee Available for Deposition [Dkt. # 1155] is granted; Advice to Court [Dkt. #1178] is denied as moot; and,

Motion for Expedited Hearing on ESI Production [Dkt. # 1197] granted In part and denied in part as set forth herein.

DATED THIS 6<sup>TH</sup> DAY OF JULY, 2007.

  
Sam A. Joyner  
United States Magistrate Judge